

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF OHIO,)	
)	Civil Action No. 4:98CV2438
Plaintiffs,)	
)	Judge David D. Dowd, Jr.
vs.)	
)	
THE CITY OF YOUNGSTOWN, OHIO,)	
A Municipal Corporation,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (“U.S. EPA”), filed a Complaint in this action on October 26, 1998, alleging that Defendant, the City of Youngstown, Ohio (“Youngstown”) violated the Clean Water Act (“Act”), 33 U.S.C. § 1251 *et seq.*, by discharging pollutants from Youngstown’s wastewater treatment plant

(“WWTP”) and its sewer collection system into navigable waters contrary to the terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) permit issued to Youngstown pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

WHEREAS, the State of Ohio (“Ohio”), which was originally named as a defendant pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), filed cross-claims against Youngstown and was subsequently realigned as a party plaintiff in this Action.

WHEREAS, Youngstown is a municipal corporation, organized and existing under the laws of the State of Ohio. Youngstown owns and operates a municipal sewage treatment plant, located at 725 Poland Ave, Youngstown, Ohio, which treats wastewater produced in and around Youngstown, Ohio, and surrounding areas of Mahoning and Trumbull Counties, Ohio.

WHEREAS, the United States brings its claims pursuant to Sections 301(a) and 309 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1319, seeking the imposition of civil penalties and injunctive relief for violations of the terms and conditions of Youngstown’s current NPDES Permit No. 3PD00006*ID, as modified by Permit Nos. 3PD00006*JD and 3PD00006*KD, and certain predecessor NPDES Permits.

WHEREAS, the State of Ohio brings its claims, on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), pursuant to Sections 301(a) and 505(a) of the Act, 33 U.S.C. §§ 1311(a) and 1365(a), and Chapter 6111 of the Ohio Revised Code, seeking the imposition of civil penalties and injunctive relief for violations of the terms and conditions of Youngstown’s current and certain predecessor NPDES Permits.

WHEREAS, the Parties agree and the Court, by entering this Consent Decree, finds that settlement of these matters, without further protracted litigation is fair, reasonable and in the public interest.

NOW, THEREFORE, upon consent and agreement of the Parties, and the Court having considered the matter and being duly advised, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties consenting thereto pursuant to 28 U.S.C. §§ 1345, 1355, and 1367 and Sections 309(b) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and 1365(a). The Complaint of the United States alleges claims upon which relief can be granted under Section 309 of the Act, 33 U.S.C. § 1319, and the Complaint of the State of Ohio alleges claims upon which relief can be granted under Chapter 6111 of the Ohio Revised Code. Venue is proper pursuant to Sections 309(b) and 505(c) of the Act, 33 U.S.C. §§ 1319(b) and 1365(c), and 28 U.S.C. §§ 1391(b) and (c) and 1395(b).

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their officers, agents, employees, successors, and assigns and all other persons as set forth in Fed. R. Civ. P. 65(d). Youngstown shall provide a copy of this Consent Decree to any successor in interest at least thirty (30) days prior to transfer of that interest, and simultaneously shall notify U.S.

EPA and Ohio EPA in writing that such notice has been given. Any transfer is to be conditioned upon the transferee agreeing to undertake the obligations required by the Consent Decree. Youngstown shall use its best efforts to assure that its contractors and subcontractors perform work or activities contemplated herein in accordance with the Consent Decree, and its contracts shall include specifications and completion dates that comport to the requirements of the Consent Decree, and shall provide for liquidated damages and bonding to assure performance. Youngstown's compliance with the requirements of this paragraph shall not be a defense to any claim that Youngstown has violated any other provision of this Consent Decree.

III. DEFINITIONS

3. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq., and the regulations promulgated thereunder at 40 C.F.R. Part 122; in Chapter 6111 of the Ohio Revised Code and the regulations promulgated under that Chapter; and in Youngstown's NPDES Permit No. 3PE00006*ID, as modified by Permit Nos. 3PE00006*JD and 3PE00006*KD.

(a) "Calendar Quarter" shall mean the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.

(b) "Collection System" or "Sewer System" means the wastewater collection and transmission system owned or operated by Youngstown, designed to collect and convey municipal sewage (domestic, commercial and industrial) and stormwater to the WWTP.

(c) "Consent Decree" shall mean this Consent Decree.

(d) “Day” or “Days” as used herein shall mean a calendar day or calendar days, unless otherwise indicated. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday or legal holiday for Defendant, Defendant shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

(e) “Ohio EPA” means the State of Ohio Environmental Protection Agency.

(f) “Orchard Meadow” describes the location of Outfall 6108 at the Lily Pond in Mill Creek Park in Youngstown, OH.

(g) “Permit” means Youngstown’s National Pollutant Discharge Elimination System Permit No. 3PE00006*KD, effective November 1, 1996, and any such effective permit that succeeds Permit No. 3PE00006*KD, including modifications thereof, issued to Youngstown.

(h) “Wastewater Treatment Plant” or “WWTP” shall refer to the municipal wastewater treatment plant owned and operated by the City of Youngstown under NPDES Permit Number 3PE00006*KD, located at 725 Poland Avenue, Youngstown, Ohio.

IV. COMPLIANCE PROGRAM

A. Compliance with NPDES Permit

4. Youngstown shall achieve and maintain compliance with Youngstown’s Permit and the provisions of the Act, 33 U.S.C. § 1281 et seq., and Ohio Revised Code Chapter 6111, and the rules promulgated thereunder, and with the compliance program and schedules set forth below.

B. Elimination of Outfall 6108

5. Unless Mahoning County has diverted all flow permanently so as to eliminate all overflows from Outfall 6108 by January 2, 2003, Youngstown shall submit, by June 2, 2003, a Permit to Install application to Ohio EPA for construction to physically eliminate the overflow at Orchard Meadow (the Lilly Pond) in Mill Creek Park (Outfall 6108) by conveying the flow causing the discharge at Orchard Meadow downstream and permanently sealing the overflow point. The Permit to Install application and detail plans shall provide all necessary information and meet all legal requirements in order for it to be approved.

6. Pursuant to the Permit to Install referenced in Paragraph 5 above or following Mahoning County's diversion of flow, Youngstown shall physically eliminate Outfall 6108 by May 17, 2006.

C. Elimination of Known Direct Discharges

7. Youngstown shall eliminate the following direct discharges that are currently not connected to the Youngstown collection system:

- (a) Tod & Irving East, Latitude 41° 6' 6" North, Longitude 80° 40' 10" West
- (b) Tod & Irving West, Latitude 41° 6' 14" North, Longitude 80° 39' 50" West

8. By June 9, 2002, Youngstown shall submit a Permit to Install application to Ohio EPA for the elimination of the direct discharge at Tod & Irving East. The Permit to Install application and detail plans shall provide all necessary information and meet all legal requirements in order for it to be approved.

9. Youngstown shall complete the design and construction for elimination of these direct discharges and shall eliminate these direct discharges by the following dates:

- (a) Tod & Irving West - May 9, 2003
- (b) Tod & Irving East – August 8, 2003

D. Development and Implementation of a CSO Long Term Control Plan

10. Youngstown shall develop a Long-term Control Plan (“LTCP”), in accordance with the requirements and schedule of deliverables set forth in Part I, Item C., Section 7.g.(5) through (9) of in NPDES Permit No. 3PE0006*KD, and in accordance with U.S. EPA’s 1994 Combined Sewer Overflow Policy:

- (a) CSO Controls Evaluation and Cost Performance Curves, for the selected CSO controls, to be submitted to Ohio EPA and U.S. EPA on or before June 1, 2002
- (b) Implementation Schedule, including any supporting analyses and a schedule for implementation of the LTCP that is as expeditious as practicable, to be submitted to Ohio EPA and U.S. EPA for review and approval on or before January 1, 2003;
- (c) Operation Plan, revised to reflect selected CSO controls, to be submitted to Ohio EPA and U.S. EPA for review and approval on or before January 1, 2004;
- (d) Post-Construction Compliance Monitoring Plan, to be submitted to Ohio EPA and U.S. EPA on or before June 1, 2006.

11. As part of its proposed Implementation Schedule submitted pursuant to Paragraph 10(b) above, Youngstown shall propose to Ohio EPA and U.S. EPA, for review and approval, at least five milestones for which stipulated penalties shall apply, pursuant to Paragraph 38, if the

milestones are not achieved in accordance with the approved Implementation Schedule for the LTCP.

The milestones proposed by Youngstown shall relate to and be consistent with the proposed Implementation Schedule and shall be based on objective criteria such that Youngstown, U.S. EPA, and Ohio EPA shall each be capable of, on the associated milestone date, determining with certainty whether Youngstown has completed that milestone. The final milestone shall be the submission of the Post Construction Monitoring Program Report.

12. Upon approval by Ohio EPA and U.S. EPA of the LTCP, the approved LTCP shall be incorporated into and made an enforceable part of this Consent Decree, and Youngstown shall implement the approved LTCP in accordance with the schedule included in the approved LTCP.

13. Implementation of its approved LTCP shall not relieve Youngstown of its obligation to comply with the requirements of its Permit, including, but not limited to, general water quality and technology-based effluent limitations.

E. Removal of Accumulated Sewer Sediments

14. By April 30, 2002, Youngstown shall submit to Ohio EPA a plan to remove the accumulated material and sediment in the Mill Creek Collector downstream of Overflow Chamber # 20.

15. By June 30, 2002, Youngstown shall complete the removal of the accumulated material and sediment in the Mill Creek Collector downstream of Overflow Chamber # 20.

F. Short-Term Improvements to Collection System Maintenance Programs, Documentation and Data Management

16. By August 31, 2002, Youngstown shall undertake the Collection System Maintenance Data Management Improvements described in Exhibit A, attached to this Consent Decree.

G. Collection System Maintenance Programs and Data Management Evaluation and Improvement Plan

17. Youngstown shall undertake an evaluation of its current Collection System maintenance program and its current paper-based approach to maintenance data management and shall incorporate such evaluation as part of its Operation Plan to be submitted to Ohio EPA and U.S. EPA pursuant to NPDES Permit No. 3PE00006*KD by January 1, 2004. Youngstown shall implement the maintenance data management improvements by August 5, 2006.

18. Youngstown's evaluation shall specifically include the following:

(a) a discussion of the adequacy of Youngstown's current collection system inspection and sewer/appurtenance/catch basin cleaning programs, and proposed improvements to those programs;

(b) a discussion of the adequacy of Youngstown's current pump station preventative maintenance schedules, and proposed modifications to those schedules;

(c) a discussion of the adequacy of Youngstown's current approach to prioritization and completion of corrective maintenance activities, and proposed improvements to Youngstown's approach to corrective maintenance;

(d) a summary of the available, computerized data management systems reviewed, an evaluation of Youngstown's data management needs, and identification of an appropriate approach,

consistent with Youngstown's available resources and data management needs, to computerizing Youngstown's collection system data management;

(e) a schedule for the completion of the proposed modifications to Youngstown's collection system maintenance program and for acquisition and implementation of the proposed approach to computerizing Youngstown's collection system data management.

H. Replacement of the Meadowbrook Pump Station and the Lansdowne Pump Station

19. By March 25, 2004, Youngstown shall replace the existing Meadowbrook Pump Station as approved by Ohio EPA on May 1, 2001, in Ohio PTI # 02-14696.

20. By May 27, 2006, Youngstown shall submit a Permit to Install application to Ohio EPA for the replacement of the Lansdowne Pump Station located at 1825 Lansdowne Blvd., Youngstown, Ohio, 44505. The Permit to Install application and detail plans shall provide all necessary information and meet all legal requirements in order for it to be approved. By October 12, 2007, Youngstown shall replace the existing Lansdowne Pump Station.

I. Dry Run Pump Station

21. Following submission of all elements of the LTCP, if the Dry Run Pump Station is to remain in service, Youngstown shall submit to Ohio EPA a plan for additional upgrades necessary for proper operation of the Dry Run Pump Station.

J. Revised CSO Inspection Schedule

22. By May 1, 2002, Youngstown shall implement the revised CSO inspection schedule, presented in Exhibit B attached to this Consent Decree. This revised schedule shall be in lieu of the

rotating schedule to sample at least five stations per month as set forth in Part (II)(F) of the City's NPDES Permit No. 3PE00006*ID (page 18 of 31).

K. Measures to Address Vandalism

23. As part of its Operation Plan to be submitted to Ohio EPA and U.S. EPA pursuant to NPDES Permit No. 3PE00006*KD by January 1, 2004, Youngstown shall identify and implement additional measures consistent with Youngstown's available resources, to reduce and discourage vandalism to its sewer system structures and manholes.

L. Installation of Additional CSO Level Sensing Devices

24. By January 27, 2005, Youngstown shall install level sensing equipment in the overflow structures associated with Outfalls 6003, 6025, and 6044.

V. FUNDING

25. Compliance with the terms of this Consent Decree by Youngstown is not conditioned on the receipt of federal or state grant funds. In addition, failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same.

VI. REPORTING

26. Beginning forty-five (45) days after the end of the next calendar quarter after entry of this Consent Decree and forty-five (45) days after the end of every calendar quarter thereafter until this

Consent Decree terminates in accordance with Section XX (Termination), below, Youngstown shall submit a written Status Report to U.S. EPA and Ohio EPA in conjunction with its Monthly Operating Report for the month following the end of the calendar quarter. In each Status Report, Youngstown shall provide the following:

(a) a statement setting forth the deadlines and other terms that Youngstown is required by this Consent Decree to meet since the date of the last quarterly statement, whether and to what extent Youngstown has met these requirements, and the reasons for any noncompliance; and

(b) a general description of the work completed within the three-month period, and a projection of work to be performed pursuant to this Consent Decree during the three-month period. Youngstown shall notify U.S. EPA and Ohio EPA of any anticipated delay, but such notice shall not, by itself, excuse the delay.

27. Until the termination of this Consent Decree pursuant to Section XX (Termination) below, Youngstown shall submit to U.S. EPA a copy of each report which it is required by Youngstown's Permit to submit to Ohio EPA at the time such reports are due to Ohio EPA, including monthly operating reports and unauthorized discharge reports.

28. Youngstown shall retain all underlying documents from which it has compiled any report or other submission required by this Consent Decree until four years after termination, pursuant to Section XX, of that part of the Consent Decree to which those documents relate. Youngstown will be permitted to dispose of the records after it has provided Ohio EPA and U.S. EPA with written notification that the documents will be destroyed in 30 days unless the City receives written objection from either of the Plaintiffs.

VII. CIVIL PENALTY

29. Youngstown shall pay a civil penalty in the amount of \$60,000 (\$30,000 to the United States and \$30,000 to the State of Ohio), within thirty (30) days after entry of this Consent Decree. Payment to the United States shall be made via Fedwire Electronic Funds Transfer (“EFT”) to the Department of Justice Lockbox Bank in accordance with specific instruction to be timely provided to Youngstown upon entry of this Consent Decree and shall reference DOJ case No. 90-5-1-1-4383, the Civil Action Number assigned to this case by the United States District Court (No. 4:98CV2438) and File No. 2002Z00085 for the United States Attorney’s Office for the Northern District of Ohio. Any funds received at the Lockbox bank after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Youngstown shall advise the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Ohio at the time payment is being wire-transferred. In addition, Youngstown shall confirm to U.S. EPA and the Department of Justice that payment has been made by providing notice in the manner specified in Section XV, below.

30. Payment to Ohio shall be made by cashier’s check or certified funds, payable to “Treasurer, State of Ohio,” and shall be sent to:

Jena Suhadolnik, Administrative Assistant
(or her successor)
Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410.

Payment may also be made by electronic transfer to the designated accounts pursuant to instructions sent by Ohio upon request by Youngstown. A copy of the check and transmittal letter or other evidence of payment shall be sent to Ohio and Ohio EPA at the addresses set forth in Section XV, below.

31. Interest shall accrue upon any balance of the penalty due to the United States that remains unpaid after thirty (30) days from the entry of this Consent Decree at the statutory judgment interest rate prescribed at 28 U.S.C. § 1961 in effect on the day this Consent Decree is entered by the Court. Payment of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Youngstown's failure to make timely payment under this Section. Interest shall accrue on any amounts overdue to the State of Ohio under the terms of this Consent Decree at the statutory rate pursuant to Ohio Revised Code § 1343.03.

VIII. STIPULATED PENALTIES

32. If Youngstown fails to comply with any daily maximum effluent limitations, any 7-day average (weekly average) limitations, or any 30-day average (monthly average) limitations contained in its Permit for Oil/Grease, Total Residual Chlorine, Copper, Cadmium, Zinc-Tot. Rec., pH, Copper-Tot. Rec., Fecal Coliform, Suspended Solids, Ammonia or Lead, or any monitoring requirements of its Permit, Youngstown shall pay the following stipulated penalties, as applicable:

Any daily maximum effluent limitation violation or monitoring violation	\$200 per day per violation
Any weekly average violation	\$400 per violation

Any monthly average violation

\$650 per violation

33. Except for discharges addressed by Section IV. B. (Elimination of Outfall 6108) and Section IV.C. (Elimination of Known Direct Discharges), and wet weather discharges from reserved overflows 6087, 6089, 6090, and 6106, Youngstown shall pay a stipulated penalty for any unauthorized or unpermitted discharge from Youngstown's WWTP or from Youngstown's Collection System of \$1,000 per day.

34. Any construction-related bypasses or overflows that are necessary to perform the injunctive relief set forth in Section IV. B. (Elimination of Outfall 6108), Section IV.C. (Elimination of Known Direct Discharges), Section IV.E. (Removal of Accumulated Sewer Sediments), Section IV.H. (Replacement of Meadowbrook and Lansdowne Pump Stations), and Section IV.I. (Dry Run Pump Station) of this Consent Decree shall not be subject to the stipulated penalties set forth in Paragraph 33 above, provided that Youngstown: (i) submits to Ohio EPA fourteen (14) days prior to commencement of the bypass or overflow event written notice specifying the exact location of the bypass or overflow and the anticipated length of time the bypass or overflow will exist; (ii) obtains approval for the bypass or overflow from Ohio EPA; and (iii) and otherwise complies with applicable provisions of the "Unauthorized Discharges," "Noncompliance Notification," and "Duty to Mitigate" sections of its Permit.

35. If Youngstown fails to comply with any deadline set forth in Section IV.B. (Elimination of Outfall 6108), Section IV.C. (Elimination of Known Direct Discharges), Section IV.E. (Removal of

Accumulated Sewer Sediments), or Section IV.H. (Replacement of Meadowbrook and Lansdowne Pump Stations), Youngstown shall pay the following stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Stipulated Penalty</u>
1st to 30th day	\$200 per day
31st to 60th day	\$750 per day
After 60th day	\$1,250 per day

36. If Youngstown fails to comply with any deadline set forth in Section IV.F. (Short-Term Improvements to Collection System Maintenance Programs, Documentation, and Data Management), Section IV.G. (Collection System Maintenance Programs and Data Management Evaluation and Improvement Plan), Section IV.J. (Revised CSO Inspection Schedule), Section IV.K. (Measures to Address Vandalism), or Section IV.L. (Installation of Additional CSO Level Sensing Devices), Youngstown shall pay the following stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Stipulated Penalty</u>
1st to 30th day	\$150 per day
31st to 60th day	\$375 per day
After 60th day	\$675 per day

37. If Youngstown fails to comply with any deadline for submission of the deliverables set forth in Paragraph 10 of Section IV.D. (Development of CSO Long Term Control Plan), Youngstown shall pay the following stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Stipulated Penalty</u>
1st to 30th day	\$200 per day

31st to 60th day	\$500 per day
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After 60th day	\$2000 per day
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38. If Youngstown fails to comply with any of the approved LTCP milestone dates proposed in accordance with Paragraph 11, Youngstown shall pay the following stipulated penalties with respect to each of the approved milestones:

<u>Period of Failure to Comply</u>	<u>Stipulated Penalty</u>
1st to 30th day	\$200 per day
31st to 60th day	\$500 per day
After 60th day	\$2000 per day

39. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of completion of the activity or correction of noncompliance. Any stipulated penalties incurred by Youngstown shall be paid within thirty (30) days after the date that Youngstown receives a written demand therefor from U.S. EPA or Ohio EPA. Fifty percent (50%) of the penalty shall be paid to the United States by certified or cashiers check payable to "Treasurer, United States of America," and shall be tendered to the United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio, within thirty (30) days of the demand from U.S. EPA or Ohio EPA. Fifty percent (50%) of the penalty shall be paid to the State of Ohio by a cashier's check or certified funds payable to "Treasurer, State of Ohio" along with a copy of the same letter to be submitted to the United States, and sent to:

Jena Suhadolnik, Administrative Assistant

(or her successor)
Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410.

Youngstown shall transmit evidence of any payment made pursuant to Paragraphs 32 through 38 of this Consent Decree to the United States and the State of Ohio at the addresses set forth in Section XV (Notices) and shall include a description of the violation of the Consent Decree or NPDES Permit, including the date of violation, for which it is making payment. Interest shall accrue on any overdue amounts as provided in Paragraph 31 of this Consent Decree.

40. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States or to the State of Ohio by reason of Youngstown's failure to comply with the requirements of this Consent Decree, Youngstown's Permit, or the Act. The payment of such stipulated penalties shall not be construed so as to relieve Youngstown from specific compliance with this Consent Decree or federal or state law, or limit the authority of U.S. EPA or Ohio EPA to require compliance with such laws. The United States and State of Ohio are specifically authorized to seek injunctive relief in this Civil Action to address any violation of this Consent Decree. In an action for civil penalties based upon a violation of the Act, the Parties stipulate that evidence that Youngstown has paid a stipulated penalty to the United States, U.S. EPA, and/or the State of Ohio for the same violation for the same day in issue is admissible for purposes of fact of payment but not as an admission of liability and can be considered as a factor in mitigation of a penalty.

41. Notwithstanding any other provision of this Section, the United States and the State of Ohio may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree .

IX. FORCE MAJEURE

42. *Force Majeure -- U.S. EPA and Youngstown:* "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond Youngstown's control or the control of any entity controlled by Youngstown, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree and which could not be overcome by due diligence. Unanticipated or increased costs or changed financial circumstances are not Force Majeure events. Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Consent Decree, are not Force Majeure events.

43. If any event occurs which causes or may delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, Youngstown shall so notify U.S. EPA, in writing, within thirty (30) days after Youngstown knew, or in the exercise of due diligence should have known, of the event. The notice shall describe in detail the bases for Youngstown's contention that it experienced a Force Majeure event, the precise cause or causes of the event, the measures taken or to be taken to prevent or minimize the noncompliance or event, and the timetable by which those measures will be implemented. Failure to so notify U.S. EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

44. If U.S. EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period. Provided that Youngstown has submitted timely and complete applications to the responsible permitting authorities for the issuance of the necessary authorizations for work to be performed under this Consent Decree, and provided that Youngstown has used best efforts to obtain timely approvals and authorizations, delays caused by the failure of such authorities to issue such authorizations may provide a basis for changes or extensions of time under this Consent Decree. In proceedings on any dispute regarding a delay in performance, the provisions of Section X (Dispute Resolution), shall apply, and Youngstown shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

45. Youngstown shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. Youngstown may petition for the extension of more than one compliance date in a single request.

46. *Potential Force Majeure - Ohio and Youngstown:*

(a) If any event occurs that causes or may delay the completion of any requirement of this Consent Decree, whether or not due to a Potential Force Majeure event, Youngstown shall so notify Ohio EPA, in writing, within thirty (30) days after Youngstown knew, or, in the exercise of due diligence, should have known of the event. The notice shall describe in detail the bases for Youngstown's contention that it experienced a Potential Force Majeure event, the precise cause or causes of the event, the measures taken or to be taken to prevent or minimize the noncompliance or

event, and the timetable by which those measures will be implemented. Failure to so notify Ohio EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

(b) In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Youngstown may raise at that time that it is entitled to a defense that its conduct was caused by reasons beyond its control or the control of any entity controlled by Youngstown, including its consultants and contractors. Provided that Youngstown has submitted timely and complete applications to the responsible permitting authorities for the issuance of the necessary authorizations for work to be performed under this Consent Decree, and provided that Youngstown has used best efforts to obtain timely approvals and authorizations, delays caused by the failure of such authorities to issue such authorizations may provide a basis for changes or extensions of time under this Consent Decree.

While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Youngstown and Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time at which to adjudicate the existence of such a defense is at the time that an enforcement action is commenced by the State of Ohio. At that time the burden of proving that any potential force majeure event was or will be caused by circumstances entirely beyond Youngstown's control or the control of any entity controlled by Youngstown, including its consultants and contractors, shall rest with Youngstown. Nothing in this section is intended to relieve Youngstown of its duty to use all due diligence to complete the requirements of this Consent Decree in a timely matter or of Youngstown's obligation to meet all discharge limitations and other obligations contained in Youngstown's Permit. Unanticipated or increased costs or changed financial circumstances are not Force Majeure events. Failure to apply for a required permit or approval, or to provide in a timely

manner all information required to obtain a permit or approval necessary to meet the requirements of this Consent Decree, are not Force Majeure events. Youngstown must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

X. DISPUTE RESOLUTION

47. Any dispute which arises between Youngstown and the United States with respect to the meaning, application, or implementation of any of the requirements of this Consent Decree, shall be, in the first instance, the subject of informal negotiations between those Parties to attempt to resolve such disputes. Such period of informal negotiations shall not extend beyond thirty (30) days of the date when notice of a dispute is given by one Party to the other, unless both Parties have agreed in writing to extend that period. After informal negotiations, if Youngstown and the United States are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Youngstown shall comply with the position taken by the United States, subject only to Youngstown's right to petition the Court as set forth in Paragraph 48, below.

48. Within thirty (30) days after the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 47, above, Youngstown may petition the Court for relief. Such petition shall set forth the nature of the dispute and proposal for its resolution. The United States shall have thirty (30) days to respond to the petition and propose an alternate resolution. In any such dispute, Youngstown shall bear the burden of demonstrating that its actions or positions taken are in accordance with and will assure Youngstown's compliance with the terms, conditions, requirements,

and objectives of this Consent Decree and the Clean Water Act. The legal standard applicable to any such dispute shall be the standard provided by applicable law.

49. The filing of a petition asking the Court to resolve a dispute shall not in and of itself extend or postpone any of Youngstown's obligations under this Consent Decree, provided that payment of any stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. In the event that Youngstown does not prevail on the disputed issue, stipulated penalties, if applicable, shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. RIGHT OF ENTRY

50. U.S. EPA and its representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the Youngstown WWTP and property owned or controlled by Youngstown regarding its Collection System, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- (a) monitoring the progress of activities required by this Consent Decree;
- (b) verifying any data or information required to be submitted pursuant to this Consent Decree;
- (c) obtaining samples and, upon request, splits of any samples taken by Youngstown or its consultants (upon request, Youngstown will be provided with splits of all samples taken by the United States or Ohio); and
- (d) otherwise assessing Youngstown's compliance with this Consent Decree.

51. This Section in no way limits or affects any right of entry and inspection held by the United States, U.S. EPA, Ohio, and Ohio EPA pursuant to applicable federal or state laws, regulations, or permits.

XII. PERMIT OBLIGATIONS

52. This Consent Decree does not itself authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval of such construction or modification shall be as required by applicable county, state, or federal laws or regulations.

53. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it be interpreted to be such. This Consent Decree does not relieve Youngstown of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations.

XIII. CERTIFICATION

54. Any report, plan, proposal, or other submission which is required of Youngstown by this Consent Decree, including reports, plans, proposals, or other submissions which are required of Youngstown by its NPDES Permit, shall be signed by an official or authorized agent of Youngstown and shall include the following certification:

I certify under penalty of law that the document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XIV. EFFECT OF SETTLEMENT

55. This Consent Decree resolves the civil claims of the United States and the State of Ohio for the violations of the Clean Water Act and Ohio Revised Code Chapter 6111 set forth in the Complaints filed in this action, including effluent violations associated with the water quality of the Defendant's Combined Sewer Overflows discharges, through the date of lodging of this Consent Decree.

56. This Consent Decree in no way affects or relieves Youngstown of its responsibility to comply with any federal, state or local law, regulation or permit, or to obtain any applicable federal or state permit or approval including, but not limited to, a permit to install. The Parties agree that Youngstown is responsible for achieving and maintaining compliance with all applicable federal and State laws, regulations and permits.

57. The United States and Ohio expressly reserve all rights to obtain penalties or injunctive relief under the Act or other federal or state statutes or regulations not specifically addressed by Paragraph 55 of this Consent Decree.

58. Nothing herein shall be construed to limit the authority of the United States or the State of Ohio to undertake any action against any person, including Youngstown, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare or the environment.

59. Nothing herein shall be construed to limit the authority of the United States to act under Section 308 of the Act, 33 U.S.C. § 1318.

60. The United States and Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

61. Except as otherwise provided in this Consent Decree, nothing in this Consent Decree limits or precludes Youngstown's right or ability to contest or defend against any action or proceeding by the United States or Ohio under Paragraphs 57 through 60 of this Consent Decree.

62. This Consent Decree does not limit or affect the rights of Youngstown, the United States, or the State of Ohio as against any third parties, nor does it limit the rights of third parties.

XV. NOTICES

63. Except as specified otherwise, written notification (including all reports) or communication with the United States Department of Justice, the United States' Attorney, U.S. EPA, the State of Ohio, Ohio EPA, and/or Youngstown required by the terms of this Consent Decree, shall be addressed as follows:

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Case No. 90-5-1-1-4383

As to the United States Attorney:

Steven J. Paffilas
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue East
Cleveland, Ohio 44114-2600

As to U.S. EPA :

Chief, Water Enforcement and Compliance Assurance Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois, 60604

Reginald A. Pallesen
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson, Blvd.
Chicago, Illinois 60604

As to the State:

Brian Hall (or his successor)
Northeast District Office
Ohio Environmental Protection Agency
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

Randy Bournique (or his successor)
Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

As to Youngstown:

Carmen S. Conglose, Jr.
Deputy Director of Public Works
City of Youngstown, Ohio
City Hall
26 Phelps Street
Youngstown, Ohio 44503

Iris Torres Guglucello
Deputy Law Director
City of Youngstown, Ohio
City Hall
26 Phelps Street
Youngstown, Ohio 44503

All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested.

XVI. COSTS OF SUIT

64. Each party shall bear its own costs, attorneys' fees and expenses in this action.

XVII. PUBLIC COMMENT

65. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. The United States reserves the right to withdraw or withhold

its consent if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. Youngstown shall not withdraw its consent to this Consent Decree during the period of governmental and judicial review between lodging and entry of this Consent Decree.

XVIII. CONTINUING JURISDICTION

66. The Court shall retain jurisdiction over this case until termination of this Consent Decree in order to enforce this Consent Decree and to interpret the rights and obligations of the Parties to this Consent Decree. During the pendency of this Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate this Consent Decree.

XIX. MODIFICATION

67. There shall be no modification of this Consent Decree without written approval by all parties to this Consent Decree and the Court.

XX. TERMINATION

68. This Consent Decree shall terminate in phases as set out below, provided that the following has occurred as to each phase on which termination is sought:

(a) Youngstown has achieved compliance with the terms and conditions of this Consent Decree and is in compliance at the time it makes the request for termination;

(b) Youngstown has paid all penalties due hereunder and no penalties are outstanding or owed to the United States and State of Ohio;

(c) Youngstown has certified compliance, pursuant to subparagraphs (a) and (b), above, to the Court, the State of Ohio and United States; and,

(d) If Ohio EPA and U.S. EPA, within 60 days of receiving the certification pursuant to subparagraph C, above, have not contested that certification.

69. The stipulated penalty provisions regarding effluent limit violations and monitoring violations, as set out in Paragraph 32 of this Consent Decree, shall terminate, pursuant to Paragraph 68 of this Consent Decree, with respect to any individual parameter after Youngstown has complied with the effluent limitations applicable to such parameter as set forth in Youngstown's Permit for a period of 12 consecutive months following the entry of this Consent Decree, and with respect to monitoring violations after Youngstown has complied with the monitoring requirements as set forth in Youngstown's Permit for a period of 12 consecutive months following the entry of this Consent Decree.

70. The provisions set out in Section IV.B. (Elimination of Outfall 6108), Section IV.C. (Elimination of Known Direct Discharges), Section IV.E. (Removal of Accumulated Sewer Sediments), Section IV.G. (Collection System Maintenance Programs and Data Management Evaluation and Improvement Plan), Section IV.H. (Replacement of Meadowbrook and Lansdowne Pump Stations), and Section IV.L. (Installation of Additional CSO Level Sensing Devices) of this Consent Decree, and the respective stipulated penalty provisions set out in Paragraphs 35 and 36 of this Consent Decree, shall terminate, pursuant to Paragraph 68 of this Consent Decree, upon successful completion of the

requirements of any individual Section and the remedial projects and improvements required by that Section.

71. The remainder of this Consent Decree shall terminate, pursuant to the certification procedures set out in Paragraph 68 of this Consent Decree, after Youngstown has completed all projects identified in the schedule included in the approved Long Term Control Plan and has completed the Post-Construction Compliance Monitoring Program and submitted the Post-Construction Compliance Monitoring Program Report required by its Long Term Control Plan, as provided in Section IV.D (development and implementation of the Long Term Control Plan) of this Consent Decree.

Entered this _____ day of _____, 2002.

DAVID D. DOWD, JR., JUDGE
UNITED STATES DISTRICT COURT

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. City of Youngstown, et al., No. 4:98 CV 2438 (N.D. Ohio)

FOR THE DEFENDANT THE CITY OF YOUNGSTOWN,
THROUGH ITS BOARD OF CONTROL

The Honorable George M. McKelvey
Mayor
City of Youngstown, Ohio
City Hall
26 Phelps Street
Youngstown, Ohio 44503

Barbara Burtner
Finance Director
City of Youngstown, Ohio
City Hall
26 Phelps Street
Youngstown, Ohio 44503

Robert E. Bush, Jr.
Director of Law
City of Youngstown, Ohio
City Hall
26 Phelps Street
Youngstown, Ohio 44503

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. City of Youngstown, et al., No. 4:98 CV 2438 (N.D. Ohio)

FOR THE UNITED STATES OF AMERICA

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Leslie E. Lehnert
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
202/ 514-1761

United States Attorney

Steven J. Paffilas
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue East
Cleveland, Ohio 44114-2600
(216) 622-3698

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al.,
v. City of Youngstown, et al., No. 4:98 CV 2438 (N.D. Ohio)

FOR U.S. EPA

Sylvia K. Lowrance
Acting Assistant Administrator for
Enforcement and Compliance Assurance
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. City of Youngstown, et al., No. 4:98 CV 2438 (N.D. Ohio)

FOR U.S. EPA

Thomas V. Skinner
Regional Administrator
United States Environmental Protection Agency
Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Reginald A. Pallesen
Associate Regional Counsel
United States Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al.,
v. City of Youngstown, et al., No. 4:98 CV 2438 (N.D. Ohio)

FOR THE STATE OF OHIO

Betty Montgomery
Attorney General of Ohio

By: _____
Teri J. Finfrock
Assistant Attorney General
Environmental Enforcement Section
Office of the Attorney General
30 East Broad Street/25th Floor
Columbus, Ohio 43215-3428

EXHIBIT A

Short-Term Collection System Maintenance Data Management Improvements

1. Develop and use a revised Attendance Sheet to be used by Youngstown's System Maintenance Chief to keep track of collection system work crews' activities. The revised Attendance Sheet will specifically provide for the inclusion of detailed information (including address or nearest cross street and specific task assigned) regarding each Work Order assigned to the work crews. Each Attendance Sheet will remain posted or in an "active" file until all Work Orders recorded on that Attendance Sheet are closed out.
2. Modify existing record keeping practices such that a) Work Orders with uncompleted work are effectively linked to follow-on Work Orders, b) each decision by the System Maintenance Chief regarding the need for follow-on work is documented on the original Work Order, and c) all initial Work Orders are closed out (i.e. the final disposition of the work is noted on the original Work Order, including circumstances in which the work is assigned to and completed by a contractor) prior to being filed.
3. Develop and implement a record keeping mechanism by which the System Maintenance Chief shall keep track of a) Work Orders directed to the Assistance Superintendent for assignment to an emergency contractor, b) progress on such contract work, and c) post-construction inspection of contract work and the closing out of contracted-out Work Orders.
4. Develop and implement a system to use Work Orders and the improved Attendance Sheets from Item 1 above to track the assignment of pump station repairs and routine maintenance.
5. Determine the purpose of the "Catch Basin Maintenance - WWTP" form, as compared to Work Order forms. If the Catch Basin Maintenance form is duplicative of the Work Order form, eliminate the Catch Basin Maintenance form; if it is not duplicative, then use it for its separate purpose and do not use it interchangeably with the Work Order forms.
6. Develop and implement simple spreadsheet tables of work orders so as to access data by activity type as well as other categories of information. The spreadsheets should include searchable data fields for Work Order ID Nos., Date Generated / Closed, Type of Work (i.e. -scheduled vs. Follow-up vs. Complaint), if follow-up Work Order, prior Work Order ID No., location (address), nature of complaint/problem: (sewer stopped, house connection stopped, storm drain stopped, manhole cover, odor/gas, spill/overflow).

It is anticipated that the development of these spreadsheets will allow for importation of data from the spreadsheets into a more sophisticated computerized collection system maintenance data management system, if such a system is ultimately adopted and implemented by Youngstown.

7. It is anticipated that implementation of the activities described in Items 1 through 6 above will require Youngstown to employ one or two additional clerical staff in direct support of collection system maintenance record keeping activities.

EXHIBIT B

REVISED INSPECTION SCHEDULE

1. Combined Sewer Overflows (“CSOs”) to be inspected after rainfall:

6044, 6042, 6129, 6017, 6039, 6053, 6090, 6057, 6050, 6009, 6020,
6015, 6003, 6062, 6026, 6025, 6043, 6080, 6108, 6028, 6048, 6029,
6016, 6051, 6002, 6027, 6004, 6006, 6008, 6011, 6014, 6031, 6035,
6056, 6067, 6098, 6099, 6101, 6126

2. The 39 “rainfall” CSOs shall be inspected within two (2) days of the end of a rainfall event sufficient to generate overflows in Youngstown’s system ($>0.25''$).

3. If more than one rainfall event occurs in a calendar week, Youngstown does not need to reinspect the 39 “rainfall” CSOs following the second event that calendar week. (Youngstown has about 80 events a year, so inspection after every event would have them inspecting the 39 “rainfall” CSOs an average of about six (6) times a month.)

4. If no rainfall occurs, Youngstown will continue to inspect the 39 “rainfall” CSOs once in every two (2)-week period. It is recognized that this will most easily be accomplished in extended dry periods and the intent is to be flexible in looking at performance of these “dry period” inspections for the 39 “rainfall” CSOs.

